Little River Band of Ottawa Indians Tribal Government *and* Local 406, International Brotherhood of Teamsters. Case 07–CA–051156

March 18, 2013

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN AND BLOCK

At issue in this case is whether the Respondent, Little River Band of Ottawa Indians Tribal Government (the Respondent or the Band), is subject to the Board's jurisdiction and, if so, whether it violated Section 8(a)(1) of the Act by maintaining and publishing certain provisions of its Fair Employment Practices (FEP) Code and related regulations which, by their express terms, apply to employees of the Little River Casino Resort (the Resort) and govern the rights of those employees to organize and bargain collectively.[1] We answer both questions in the affirmative.

As discussed below, this is not a case of first impression. Rather, in almost every respect, it is very much like *San Manuel Indian Bingo & Casino*, 341 NLRB 1055 (2004), affd. 475 F.3d 1306 (D.C. Cir. 2007), rehearing en banc denied (2007), which we find dispositive of the jurisdictional issue before us. On the merits, the Respondent concedes that, if the Board has jurisdiction over the Resort, its conduct violated the Act as alleged in the complaint.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a federally recognized Indian Tribe, with an office and facilities in Manistee, Michigan, is engaged in the operation of a casino and resort. During 2010, the Respondent, in conducting its business operations, derived gross revenues in excess of $20 million, and purchased and received at its Manistee facilities supplies and services valued in excess of $50,000 directly from points outside the State of Michigan for use in connection with the casino and resort.

For the reasons discussed below, we find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The parties stipulated, and we find, that the Union, Local 406, International Brotherhood of Teamsters, is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

The Little River Band of Ottawa Indians Tribe has approximately 4000 enrolled members. The Tribe has the use of over 1200 acres of land in and near Manistee and Mason Counties, Michigan (tribal lands). Three hundred and eighty members live in or near tribal lands.

The Tribe has a constitution and three branches of government: (1) an executive branch known as the office of the Tribal Ogema; (2) a legislative branch known as the Tribal Council; and (3) a judicial branch known as the Tribal Court.

The Tribe has no significant base within its jurisdiction upon which to levy taxes. In order to raise revenue, the Tribal Council established the Resort under the authority of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701, et seq. The Resort is owned and controlled by the Respondent and is located on tribal land. Its facilities include 1500 slot machines, gaming tables, a high limits gaming area, bingo facilities, a 292-room hotel, a 95-space RV park, 3 restaurants, a lounge, and a 1700-seat event center.

The Resort has 905 employees, including 107 tribal members and 27 members of other Native American tribes. The majority of Resort employees (771) are neither enrolled members of the Band nor Native Americans.[2] The majority of the Resort's customers are also non-Indians who come from Michigan outside of tribal lands, other States, and Canada. The Resort competes with other Indian and non-Indian casinos in Michigan, other States, and Canada.

The gross revenues of the Resort exceed $20 million annually. Pursuant to the IGRA, net revenues generated by the Resort may be used only for governmental services, the general welfare of the Tribe and its members, tribal economic development, or to support local governmental or charitable organizations.[3] The Resort pro-

[1] Upon a charge filed on March 28, 2008, by Local 406, International Brotherhood of Teamsters, the Acting General Counsel of the National Labor Relations Board issued an 8(a)(1) complaint on December 10, 2010, against the Respondent. The Respondent filed a timely answer admitting in part and denying in part the allegations of the complaint and asserting as an affirmative defense that the Board lacks jurisdiction in this matter.

On August 3, 2011, the Respondent, the Union, and the Acting General Counsel filed with the Board a stipulation of facts. The parties agreed that the charge, the complaint, the answer, the stipulation, and the exhibits attached to the stipulation shall constitute the entire record in this proceeding and they waived a hearing before and decision by an administrative law judge. On December 20, 2011, the Board approved the stipulation and transferred the proceeding to the Board for issuance of a decision and order. The Acting General Counsel and the Respondent filed briefs.

[2] The Tribal government employs 1150 employees overall (including 905 at the Resort). Qualified enrolled members of the Tribe are given preference over non-Indians for employment positions within governmental departments and subordinate organizations, including the Resort.

[3] 25 U.S.C. § 2710(b)(2)(B).

vides over half of the Tribe's total budget, and substantially funds the Tribe's Department of Natural Resources, Department of Public Safety, mental health and substance abuse services, Department of Family Services, Housing Department, Tribal prosecutor's office, and Tribal Court.

The Tribal Council has delegated authority to a Gaming Enterprise Board of Directors to manage the Resort. However, the Tribal Ogema and the Tribal Council maintain strict oversight of Resort operations.

Through the Tribal Council, the Respondent enacted the FEP Code and regulations to govern a variety of employment and labor matters. The FEP Code by its express terms applies to the Resort, Resort employees, and the unions that seek to represent those employees. Articles XVI and XVII of the FEP Code govern labor organizations and collective bargaining. The parties have stipulated that Article XVI, among other things, grants to the Respondent the authority to determine the terms and conditions under which collective bargaining may or may not occur; prohibits strikes by the Respondent's employees and labor organizations; requires labor organizations doing business within the jurisdiction of the Band to apply for and obtain a license; and excepts from the duty to bargain in good faith any matter that would conflict with the laws of the Band, the duration of a collective-bargaining agreement (which must be 3 years), drug and alcohol testing, and decisions to hire, layoff, recall, or reorganize the work duties of employees.

B. Contentions of the Parties

The Respondent contends that the Board lacks jurisdiction in this matter. The Respondent contends that, as a federally-recognized Indian tribe, it exercises inherent sovereign authority over labor relations within its reservation pursuant to established principles of Federal Indian law. The Respondent further contends that application of the Act would impermissibly interfere with its tribal sovereignty and internal self-governance. The Respondent's defense rests entirely on its jurisdictional challenge.

The Acting General Counsel contends that the Board's exercise of jurisdiction over the Respondent is appropriate under the principles set forth in *San Manuel Indian Bingo & Casino*, 341 NLRB 1055 (2004), affd. 475 F.3d 1306 (D.C. Cir. 2007), rehearing en banc denied (2007), in which the Board asserted jurisdiction over a casino that was owned and controlled by an Indian tribe and located entirely on reservation land. The Acting General Counsel asserts that the activity at issue, the operation of a casino that employs significant numbers of non-Indians and caters to a non-Indian clientele, is commercial in nature—not governmental. In these circumstances, the Acting General Counsel contends that the Board's assertion of jurisdiction over the Respondent and the application of the Act to the Resort will not impinge upon the Respondent's traditional sovereign authority and right to self-govern.

On the merits, the Acting General Counsel contends that the challenged provisions of the FEP Code and related regulations explicitly interfere with the Section 7 rights of Resort employees by, among other things, prohibiting lawful strikes and other protected concerted activities, subjecting employees and unions to severe penalties for engaging in such activities, requiring unions seeking to organize Resort employees to obtain licenses, narrowly circumscribing the Respondent's duty to bargain with recognized unions, and otherwise preempting, restricting, and limiting the rights and remedies provided in the Act. The Respondent does not argue that the challenged provisions of the FEP Code are lawful if the Board has jurisdiction and the Act applies.

III. ANALYSIS

The parties have stipulated that the issues to be decided are (1) whether the Board has jurisdiction over the Respondent and, if so (2) whether the Respondent has violated Section 8(a)(1) of the Act by applying certain provisions of the FEP Code and related regulations which, by their express terms, apply to Resort employees and labor organizations that may represent them. We conclude that the Board has jurisdiction and that the Respondent has violated the Act as alleged.

A. Jurisdiction

1.

The jurisdictional defense raised by the Respondent presents the same issue that was decided in *San Manuel,* supra. In *San Manuel*, the Board held that the jurisdiction of the Act generally extends to Indian tribes and tribal enterprises.[4] In determining whether Federal Indian policy nevertheless requires the Board to decline jurisdiction in a specific case, the Board adopted the *Tuscarora* doctrine, which establishes that Federal statutes of general application apply to Indians absent an explicit exclusion. See *Federal Power Commission v. Tuscarora Indian Nation*, 362 U.S. 99, 116 (1960). The Federal courts have recognized several exceptions to the *Tuscarora* doctrine to limit jurisdiction over Indian tribes. The exceptions were enumerated by the Ninth Circuit in *Donovan v. Coeur d'Alene Tribal Farm*, 751 F.2d 1113,

[4] In so holding, the Board overruled prior Board decisions to the extent they held that Indian tribes and their enterprises were implicitly exempt as governmental entitles within the meaning of Sec. 2(2) of the Act. See, e.g., *Fort Apache Timber Co.,* 226 NLRB 503 (1976), and *Southern Indian Health Council*, 290 NLRB 436 (1988).

1116 (9th Cir. 1985), where the court held that general statutes do not apply to Indian tribes if: (1) the law "touches exclusive rights of self-government in purely intramural matters"; (2) application of the law would abrogate treaty rights; or (3) there is "proof" in the statutory language or legislative history that Congress did not intend the law to apply to Indian tribes. "In any of these three situations, Congress must *expressly* apply a statute to Indians before . . . it reaches them." Id. (emphasis in original).

In *San Manuel*, the Board stated that it would apply the three exceptions articulated in *Coeur d'Alene* in assessing whether Federal Indian law and policy precludes the Board's assertion of jurisdiction over Indian tribes and their commercial enterprises. The Board also adopted a discretionary jurisdictional standard. The Board explained that the discretionary jurisdictional standard is intended to balance the Board's interest in effectuating the policies of the Act with the need to accommodate the unique status of Indians in our society and legal culture. Thus, "when the Indian tribes are acting with regard to this particularized sphere of traditional tribal or governmental functions, the Board should take cognizance of its lessened interest in regulation and the tribe's increased interest in its autonomy" and decline to assert its discretionary jurisdiction. 341 NLRB at 1063. Conversely, the Board observed that "[w]hen Indian tribes participate in the national economy in commercial enterprises, when they employ substantial numbers of non-Indians, and when their businesses cater to non-Indian clients and customers, the tribes affect interstate commerce in a significant way" such that the Board should assert jurisdiction. Id. at 1062.

2.

We apply the Board's holding in *San Manuel* and find it to be dispositive in the present case. Consistent with *San Manuel*, the first step in our analysis is to assess whether the Board's assertion of jurisdiction is foreclosed under one of the three exceptions identified in *Coeur d'Alene*. As to the first exception, we find that application of the NLRA to the Resort would not interfere with the Respondent's "exclusive rights of self-government in purely intramural matters," *San Manuel,* 341 NLRB at 1059 (quoting *Coeur d'Alene,* 751 F.2d at 1116), such as "tribal membership, inheritance rules, and domestic relations." Id. at 1061 fn. 19 (quoting *Coeur d'Alene,* 751 F.2d at 1116). Like the casino at issue in *San Manuel*, the Resort is a typical commercial enterprise operating in, and substantially affecting, interstate commerce, and the majority of the Resort's employees and patrons are non-Indians. See *San Manuel,* 341 NLRB at 1061 ("[T]he operation of a casino—which employs significant numbers of non-Indians and that caters to a non-Indian clientele—can hardly be described as 'vital' to the tribes' ability to govern themselves or as an 'essential attribute' of their sovereignty.")[5]

The second and third *Coeur d'Alene* exceptions are also inapplicable. The Respondent does not allege the existence of any treaties covering the tribe. Application of the NLRA would therefore not abrogate treaty rights. Further, as the Board found in *San Manuel*, nothing in the statutory language or legislative history of the Act suggests that Congress intended to foreclose the Board from asserting jurisdiction over Indian tribes.[6] *San Manuel*, supra, 341 NLRB at 1058–1059.

The Respondent urges that the *Tuscarora-Coeur d'Alene* line of cases is inapposite here, where the validity of tribal law is questioned. The Respondent relies on *NLRB v. Pueblo of San Juan*, 276 F.3d 1186 (10th Cir. 2002), in which the Tenth Circuit upheld a tribal "right-to-work" law, rejecting the Board's contention that Section 14(b) of the Act implicitly allows only States and territories, not Indian tribes, to enact such legislation.[7] Accordingly, the Respondent reasons, the Acting General Counsel's challenge to the FEP Code and regulations must be dismissed.

We find this argument unpersuasive. The court's reasoning in *Pueblo of San Juan* was limited to the unique facts and issues in that case. The court explicitly noted that—unlike in this case—"the general applicability of federal labor law is not at issue. . . . Furthermore, the

[5] Contrary to the Respondent's argument on brief, the fact that the tribe derives revenue from the Resort which it uses to address the tribe's intramural needs does not render the operation of the Resort a traditional governmental function or an exercise in self-governance in purely intramural matters. As the Board noted in *San Manuel*, under this definition of intramural, the first *Coeur d'Alene* exception would swallow the *Tuscarora* rule. 341 NLRB at 1063.

[6] Although the Respondent argues that Indian tribes have sovereign immunity against actions by private parties to enforce contractual rights under Sec. 301 of the LMRA, evincing a Congressional intent to exempt tribes and their enterprises from the Act, it cites no authority for that proposition. In any event, we find it unnecessary to decide the issue. Indian tribes have no sovereign immunity against the United States. See id. at 1061, citing *Florida Paraplegic Assn. V. Miccosukee Tribe of Indians of Florida*, 166 F.3d 1126, 1135 (11th Cir. 1999) (immunity doctrines do not apply to the Federal Government); R*eich v. Mashantucket Sand & Gravel*, 95 F.3d 174, 182 (2d Cir. 1996) ("tribal sovereignty does not extend to prevent the federal government from exercising its superior sovereign power"). Thus, even assuming that the Respondent can raise a sovereign immunity claim against a private party in a Sec. 301 suit, this would not affect the Board's authority to effectuate the public policies of the Act.

[7] Although Sec. 8(a)(3) permits employers and unions to enter into contractual union-security arrangements requiring union membership as a condition of employment, Sec. 14(b) allows States and territories to enact laws, commonly called "right-to-work" laws, prohibiting such arrangements.

Pueblo does not challenge the supremacy of federal labor law. The ordinance . . . does not attempt to nullify the NLRA or any other provision of federal law." Id. at 1191. Rather, the question was only "whether the Pueblo continues to exercise the same authority to enact right-to-work laws as do states and territories[.]" Id. The court answered in the affirmative. It reasoned that although Section 8(a)(3) of the Act otherwise permits union-security arrangements, the exception for State and territorial "right-to-work" laws in Section 14(b) clearly indicates that Congress did not intend that Federal law in this regard should be paramount. Id. at 1200. (Indeed, the court found that, because of the 14(b) exception, 8(a)(3) is not a "generally applicable" statute insofar as it permits union security, and therefore that *Tuscarora* did not apply. Id. at 1199.) In those circumstances, the court was unwilling to find that Congress implicitly intended to divest the tribe of its sovereign authority to enact the "right-to-work" ordinance. Because the court's reasoning in *Pueblo of San Juan* addressed only the narrow issue presented in that case, it is inapposite here.[8]

In any event, we find no merit in the Respondent's central contention—that Federal scrutiny of its FEP Code improperly impairs the exercise of the Tribe's sovereign right of self government. As stated above, the provisions of the Code at issue here are not directed toward tribal intramural matters over which the Respondent retains exclusive rights of self government, such as tribal membership, inheritance rules, or domestic relations. Nor are they addressed exclusively to employment relationships between the Tribe and its governmental employees, such as employees of the Tribal Court system or Tribal police personnel. Cf. *Reich v. Great Lakes Indian Fish & Wildlife Comm'n*, 4 F.3d 490, 495 (7th Cir. 1993) (exempting law enforcement employees of Indian agencies from the Fair Labor Standards Act). They are, instead, as we discuss below, a set of rules purporting to limit or deny the rights given under Federal law to (mostly non-Indian) employees of a tribal commercial enterprise operating in interstate commerce. Because *Tuscarora* requires Indian tribes to submit to Federal regulation of such enterprises (with the exceptions already discussed), it would make little sense to hold that a tribe could avoid that responsibility merely by enacting statutes or ordinances that were inconsistent with Federal law.[9]

Finally, we find that policy considerations weigh in favor of the Board asserting its discretionary jurisdiction. See *San Manuel*, supra, 341 NLRB at 1063. The Respondent provides no basis to distinguish the policy considerations at issue in *San Manuel.*

B. The Unfair Labor Practice Issues

As stated previously, the Respondent concedes that, if it is found to be subject to the Act, the provisions of the tribal FEP Code at issue are unlawful as alleged, because they either explicitly restrict Section 7 activity or employees would reasonably construe them to restrict such activity.[10] Because we have found that the Respondent is

[8] Consistent with its nonacquiescence policy, the Board respectfully continues to disagree with the court of appeals decision in *Pueblo of San Juan*. See, e.g., *Arvin Industries*, 285 NLRB 753, 756–757 (1987). For purposes of this case, however, it is sufficient that the court's decision is inapposite to the issues presented here.

[9] The Tribe is, of course, free to enact employment regulations that do not conflict with Federal law. See *Reich v. Mashantucket Sand & Gravel*, supra, 95 F.3d at 181.

The Tenth Circuit has held that Indian tribes are exempt from certain other Federal workplace statutes. *Donovan v. Navajo Forest Products Industries*, 692 F.2d 709 (1982) (OSHA); *EEOC v. Cherokee Nation*, 871 F.2d 937 (10th Cir. 1989) (ADEA). In those cases, however, the court relied extensively on statements in Supreme Court decisions to the effect that ambiguities in statutes and treaties should be resolved in favor of tribal self-government. E.g., "All doubtful expressions contained in Indian treaties should be resolved in the Indians' favor." *Donovan*, supra, 692 F.2d at 712, citing *Choctaw Nation v. Oklahoma*, 397 U.S. 620 (1970); "[I]f there [is] ambiguity . . . the doubt would benefit the tribe, for 'ambiguities in federal law have been construed generously in order to comport with . . . traditional notions of sovereignty and with the federal policy of encouraging tribal independence.'" *Cherokee Nation*, supra, 871 F.2d at 939, quoting *Merrion v. Jicarilla Apache Trube*, 455 U.S. 130, 152 (1982). With all due respect, we think that those decisions are not conclusive authority for the results reached by the Tenth Circuit. In the first place, many of the cited decisions addressed conflicts between tribal sovereignty and *State* law. Unlike the United States, however, States are not superior sovereigns to Indian tribes. Thus, it is not surprising that the Supreme Court was reluctant to conclude that tribal sovereignty (itself encouraged by established Federal policy) should be trumped by State law or policy. That similar considerations should apply to conflicts between tribal sovereignty and *Federal* law seems to us a less than self-evident proposition. And in the few decisions that even arguably addressed conflicts between general Federal law and the rights of Indian tribes, the Court upheld the former. See *U.S. v. Dion*, 476 U.S. 734 (1986) (although Indians possessed general treaty rights to hunt and fish, Federal statutes divested them of the right to kill eagles); *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978) (tribal courts lack criminal jurisdiction over non-Indians); *U.S. v. Wheeler*, 435 U.S. 393 (1978) (no double jeopardy for U.S. to prosecute defendant under Federal law after tribal court ruled under tribal law); cf. *U.S. v. Mazurie*, 419 U.S. 544 (1975) (U.S. had authority to regulate introduction of alcohol into Indian country, and validly delegated that authority to tribal council).

[10] *Lutheran Heritage Village-Livonia,* 343 NLRB 646 (2004). Thus:

Secs. 16.02, 16.03, 16.06(b) and (c), 16.15(b)(5), and 16.24(a) of the FEP Code prohibit strikes and other protected concerted activities. Secs. 16.06(a) and 16.15(b)(1), which prohibit activity that has the effect of "interfer[ing] with, threaten[ing] or undermin[ing] the Governmental Operations of the Band," would reasonably be interpreted as prohibiting protected concerted activity, such as striking or engaging in communications critical of the Respondent or its agents.

Secs. 16.08(a) and 16.24(c) and related regulations require labor unions to obtain a license before seeking to organize employees working for the Respondent, including employees of the Resort, and create an enforcement system, which includes reporting requirements and penalties. In order to obtain a license, a union seeking to represent casino

subject to the Act, we find that the Respondent has violated the Act, as alleged in the complaint.

CONCLUSIONS OF LAW

1. The Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has interfered with, restrained, and coerced employees of the Little River Casino Resort in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act, by publishing and maintaining provisions of the FEP Code and related regulations that are expressly applicable to the Resort, the Resort employees, and labor organizations that may represent those employees, and:

(a) Grant the Respondent exclusive authority to regulate the terms and conditions under which collective bargaining may or may not occur, thereby preempting application of the Act and interfering with access to the Board's processes.

(b) Prohibit strikes and other protected concerted activity and subject employees and labor organizations to fines, injunctions, and civil penalties for strike activity.

(c) Require labor organizations to obtain a license to organize employees or conduct other business and subject them to fines, penalties, and injunctions if they fail to obtain a license.

(d) Place restrictions on the duty to bargain over mandatory subjects, including "management decisions to hire, to layoff, to recall or to reorganize duties"; the duration of a collective-bargaining agreement; drug and alcohol testing policies; and any subjects in conflict with tribal laws.

(e) Limit or restrict access to the Board's processes by requiring labor organizations to notify the Respondent of any alleged unfair labor practices and attempt to resolve such disputes through grievance and arbitration, and precluding review of arbitration decisions and awards by the Board or courts; permitting contractual interest arbitration, but precluding review of any allegedly unlawful award by the Board or the courts; providing that decisions by the Tribal Court over disputes involving the duty to bargain in good faith or alleged conflicts between a collective-bargaining agreement and tribal laws shall be final and not subject to appeal; and discouraging labor organizations and employees from invoking procedures or remedies outside of the Fair Employment Practices Code.

(f) Limit the period of time that employees may file a deauthorization petition to the first 3 months of a collective-bargaining agreement, thereby interfering with employees' right under Section 9(e) of the Act to file such a petition during the entire term of a collective-bargaining agreement.

4. The unfair labor practices set out in paragraph 3 affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has maintained in its Fair Employment Practices (FEP) Code and regulations certain provisions that violate Section 8(a)(1) of the Act, we shall order the Respondent to refrain from applying the unlawful provisions of its FEP Code and regulations to the Little River Casino Resort (the Resort), employees of the Resort, or any labor organization that may represent those employees. We shall also require the Respondent to notify all current and future employees of the Resort that the unlawful provisions of the FEP Code and regula-

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employees must agree to abide by the unlawful provisions of the FEP Code and to forgo rights and remedies guaranteed under the Act. Failure to obtain the license exposes the union to court injunctions and substantial civil fines.

Several provisions of the FEP Code expressly exclude from the required scope of good-faith bargaining mandatory bargaining subjects including "management decisions to hire, to layoff, to recall or to reorganize duties" (Sec. 16.12(a)(1)(B)); the duration of a collective-bargaining agreement (Sec. 16.18); drug and alcohol testing policies (Sec. 16.20(b)); and any other matter that would conflict with tribal law (Sec. 16.12(b)). Moreover, Sec. 16.01 states, contrary to Sec. 8(d) of the Act, that the Respondent has "inherent authority" to determine "the terms and conditions under which collective bargaining may or may not occur within its territory."

Secs. 16 and 17 establish that the tribal code is the primary authority in establishing and adjudicating the collective-bargaining rights of all employees of the Respondent. When read in conjunction, Secs. 16.01, 16.03, 16.06, 16.12(b), 16.24(d), and 17.1(c) convey the message that the laws of the Respondent and not the NLRA govern the collective-bargaining rights of Resort employees. By suggesting that labor disputes must be brought before the Tribal Court, from which there can be no appeal to the Board, these provisions interfere with the access of unions and employees to the Board.

Sec. 16.16 contains a mandatory arbitration procedure for resolving unfair labor practice allegations, contrary to the settled principle that arbitration is a matter of consent, not compulsion. Under that provision, the arbitrator's decision is final and binding, except for limited review by the Tribal Court, in violation of employees' right to have unfair labor practice charges decided by the Board.

Sec. 16.17 contains an impasse resolution procedure, which includes mandatory interest arbitration at the request of either party, again contrary to Federal law.

Sec. 16.13(e) requires that an employee petition for an election to rescind a "fair share" union-security provision in a collective-bargaining agreement be filed within 90 days after execution of the agreement, contrary to Sec. 9(e) of the Act, which allows employees to file a deauthorization petition with the Board any time during the term of a collective-bargaining agreement.

tions do not apply to the Resort, its employees, or any labor organization that may represent those employees. We shall leave the manner in which the Respondent complies with these notice requirements to the Respondent's reasonable discretion, subject to approval in compliance proceedings. The Respondent may, if it chooses, effect the required notice to employees by leaving the attached notice marked "Appendix" posted in conspicuous places, including all places where notices to Resort employees are customarily posted, and, if applicable, in electronic form, after the required 60-day posting period has expired. Alternatively, the Respondent may obviate the need for such continuing notice by taking such legislative and regulatory action as is necessary to rescind the application of the unlawful provisions of the FEP Code and regulations to the Resort.

ORDER

The National Labor Relations Board orders that the Respondent, Little River Band of Ottawa Indians Tribal Government, Manistee, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Applying to the Little River Casino Resort, employees of the Resort, or any labor organization that may represent those employees, provisions of its Fair Employment Practices Code and regulations that: (i) grant the Respondent exclusive authority to regulate the terms and conditions under which collective bargaining may or may not occur; (ii) prohibit employees from engaging in strikes or other protected concerted activity and subject employees and labor organizations to fines, injunctions, and civil penalties for striking; (iii) require labor organizations seeking to represent employees of the Resort to obtain a license and subject labor organizations to fines, injunctions, and civil penalties for failing to obtain a license; (iv) place restrictions on the Respondent's duty to bargain over mandatory subjects; (v) interfere with, restrict, or discourage employees from filing charges with the National Labor Relations Board; (vi) discourage labor organizations and employees from invoking procedures or remedies outside of the Fair Employment Practices Code; or (vii) limit the period of time during which employees may file a deauthorization petition.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify all current and future employees of the Resort that it will not apply to the Resort, the employees of the Resort, or any labor organization that may represent those employees, provisions of its Fair Employment Practices Code and regulations that: (i) grant the Respondent exclusive authority to regulate the terms and conditions under which collective bargaining may or may not occur; (ii) prohibit employees from engaging in strikes or other protected concerted activity and subject employees and labor organizations to fines, injunctions, and civil penalties for striking; (iii) require labor organizations seeking to represent employees of the Resort to obtain a license and subject labor organizations to fines, injunctions, and civil penalties for failing to obtain a license; (iv) place restrictions on the Respondent's duty to bargain over mandatory subjects; (v) interfere with, restrict, or discourage employees from filing charges with the National Labor Relations Board; (vi) discourage labor organizations and employees from invoking procedures or remedies outside of the Fair Employment Practices Code; or (vii) limit the period of time during which employees may file a deauthorization petition. Alternatively, the Respondent may rescind the application of the unlawful provisions of the Fair Employment Practices Code and regulations to the Resort.

(b) Within 14 days after service by the Region, post at its Manistee, Michigan facility, copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees of the Little River Casino Resort are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 28, 2008.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region at-

[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted and Mailed by Order of the National Labor Relations Board" shall read "Posted and Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

testing to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT apply to the Little River Casino Resort, employees of the Resort, or any labor organization that may represent those employees, provisions of our Fair Employment Practices Code and regulations that: (i) grant us the exclusive authority to regulate the terms and conditions under which collective bargaining may or may not occur; (ii) prohibit employees and labor organizations from engaging in strikes or other protected concerted activity and subject employees and labor organizations to fines, injunctions, and civil penalties for striking; (iii) require labor organizations seeking to represent employees of the Resort to obtain a license and subject them to fines, injunctions, and civil penalties for failing to obtain a license; (iv) place restrictions on our duty to bargain in good faith over terms and conditions of employment; (v) interfere with, restrict, or discourage employees from filing charges with the National Labor Relations Board; (vi) discourage labor organizations and employees from invoking procedures or remedies outside of the Fair Employment Practices Code; or (vii) limit the period of time during which employees may file a deauthorization petition.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL notify all current and future employees of the Little River Casino Resort that the unlawful provisions of our Fair Employment Practices Code and regulations set forth above do not apply to them or any labor organization that seeks to represent them or WE WILL rescind the application of the unlawful provisions of the Fair Employment Practices Code and regulations to the Little River Casino Resort.

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL GOVERNMENT